

FILED

September 11, 2009
**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE SUSPENSION OR	:	Administrative Action
REVOCATION OF THE LICENSE OF	:	
	:	
IRA MORGANSTERN, M.D.	:	FINAL DECISION AND ORDER
License No. 25MA030855	:	
	:	
TO PRACTICE MEDICINE AND SURGERY IN	:	
THE STATE OF NEW JERSEY	:	
	:	

This matter was brought before the New Jersey Board of Medical Examiners by the filing of an Administrative Complaint by Anne Milgram, Attorney General of New Jersey, by David M. Puteska, Deputy Attorney General, on April 22, 2009. By his letter of May 18, 2009, John C. Whipple, counsel for respondent, indicated that respondent does not dispute the underlying allegations of the complaint, filed therewith an answer admitting all paragraphs of the complaint, and requested a hearing regarding mitigating circumstances to be considered in the imposition of penalty. Respondent was granted an opportunity to submit evidence to be considered by the Board in mitigation of penalty, and a mitigating hearing was held before the Board on June 10, 2009.

On the hearing date, respondent was represented by Mr. Whipple and John Roberts, Esq. DAG David Puteska appeared for the State. Prior to considering arguments of counsel and statements and

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letters offered by respondent, the Board confirmed that liability had already been determined and that Findings of Fact and Conclusions of Law as presented in the complaint were accepted by respondent and the State as established. Therefore the Board made the findings of the general allegations in the complaint and made the following additional findings of fact:

1. On September 18, 2007, respondent and another individual were observed discarding marijuana plants along railroad tracks located in Bethlehem Township, New Jersey. A police investigation determined that the marijuana plants had been grown at Respondent's home in Asbury, New Jersey. As a result of these facts, Respondent was arrested and charged with various drug related offenses.

2. On March 6, 2007, a Hunterdon County Grand Jury returned a four (4) count indictment against respondent and his co-conspirator. The Indictment charges respondent with: (a) Maintaining or operating a Controlled Dangerous Substances ("CDS") production facility, a first degree offense in violation of N.J.S.A.2C:35-4; (b) Possession of CDS with intent to distribute (Marijuana), a second degree offense pursuant to N.J.S.A.2C:35-5a(1) and 2C:35-5b(10); (c) Possession of CDS (Marijuana), a fourth degree offense pursuant to N.J.S.A.2C:35-10a(3); and (d) Tampering with or Fabricating Physical Evidence, a fourth degree offense pursuant to N.J.S.A. 2C:28-6(1).

3. On September 9, 2008, respondent entered into a plea agreement with the Hunterdon County Prosecutor's Office. Pursuant to the terms of that plea agreement, Respondent pled guilty to the second degree charge of Possession of CDS with Intent to Distribute. The remaining charges were to be dismissed. As part of the plea agreement, the prosecutor agreed to recommend that Respondent be sentenced as though convicted of a third degree offense.

4. At the time of his guilty plea, Respondent admitted¹ to possessing five marijuana plants with a total weight in excess of five pounds. Respondent further revealed that he had grown the marijuana at this home and intended to use it himself and/or distribute it to adult friends in his home.

5. On January 23, 2009, Respondent was sentenced to two (2) years probation, was required to forfeit and be barred from any public office and/or any public employment and was assessed various monetary fees and penalties as required by statute. The remaining counts of the Indictment were dismissed at this time.

CONCLUSIONS OF LAW

The actions of respondent described herein constitute professional misconduct in violation of N.J.S.A.45:1-21(e); being convicted of an engaging in acts constituting moral turpitude or

¹The Complaint utilized the word "admitting" in error. The term is corrected herein.

conduct relating adversely to action regulated by the Board in violation of N.J.S.A. 45:1-21(f) and/or demonstrates the failure to be of good moral character as required for licensing as a physician pursuant to N.J.S.A.45:9-6.

The Board then proceeded to a hearing to determine the sanction to be imposed in this matter. Dr. Morganstern testified regarding his remorse, humiliation, and the rehabilitative efforts he has undertaken since he was arrested in the underlying matter. Respondent took the position as he has throughout this matter that he never intended to sell marijuana, rather that he had been a social user of marijuana who grew these plants with the intent to share in the use of marijuana with adult friends at his rural home. Dr. Morganstern voluntarily entered the Professional Assistance Program beginning in November of 2007, and his successful continued participation in that program was submitted as well as his assertion that he has been drug free since entry into the program. He has completed nearly two years of the rehabilitation process. Numerous letters of support from neighbors, family and friends were submitted to the Board, as well as verification of his cooperation with the Attorney General's Office from the moment the complaint was filed by DAG Puteska. Finally Dr. Morganstern acknowledged to the Board that while he embarrassed and discredited himself by this offense, he wanted to apologize in a public way for his actions, as he reflected this discredit and embarrassment to the medical

profession and the Medical Board.

Dr. Morganstern also presented information to the Board indicating that he had not been engaged in an active medical practice for approximately 5 years, and that he has recently renewed his license in a category to reflect that he does not maintain a regular practice of medicine.

DISCUSSION

The Board is aware that this matter involves a serious criminal conviction with a guilty plea to possession of Controlled Dangerous Substances with Intent to Distribute a weight in excess of five pounds of marijuana. We are mindful that in the criminal arena the Court imposed a probationary sentence and although Dr. Morganstern pled guilty to a second degree offense all parties agreed that he could be sentenced for a lesser third degree offense given the circumstances of this matter. The facts include possession of five live marijuana plants which respondent grew at his home and intended to use himself or distribute to adult friends. From the outset of this matter, Respondent has taken responsibility for his actions, without attempting to diminish his responsibility in any way. Within a matter of weeks after the charges were filed he sought treatment and assistance to eliminate what he perceived as his previously excessive use of marijuana. All the documentation before us indicates that Respondent has remained drug free and has been monitored on a random basis ever

since. Additionally, Respondent has been serving probation and paid fines imposed upon him in the criminal system. We are mindful that the Attorney General has indicated to us that Respondent has voluntarily provided all of the information that was sought or requested of him without formal process and has asked that the Board impose whatever it considers to be an appropriate penalty in addition to the costs of prosecution.

Following conclusion of the hearing on June 17, 2009 the Attorney General filed an Application for Costs in this matter. No response was received from respondent. Therefore the Board considered the Certification of Costs submitted at its meeting of September 10, 2009 on the papers. The Board reviewed the Attorney General's application for attorneys' fees in the amount of \$1,540.00 based on work commencing in November 2008 and concluding on the date of hearing involving drafting and filing of documents, appearances before the Board, investigation, discovery, correspondence, travel and preparation for hearing.²

IT IS THEREFORE ON THIS 11th

DAY OF September 2009

ORDERED:

²The Board having previously found the rates at which legal fees are sought for the services of a Deputy Attorney General to be reasonable and on a per hour basis, and having found the fees in this matter both in terms of the activities engaged in and the number of hours involved to be reasonable, and all fees sought to be necessary for the investigation and prosecution of this matter, therefore imposed the full amount attorneys' of fees of \$1,540.00.

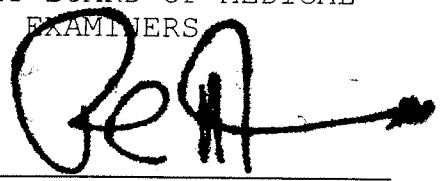
1. Respondent shall be and hereby is reprimanded for the violations found herein.

2. Respondent shall continue to participate in the Professional Assistance Program (PAP) at the direction of and in the discretion of that program until discharged by them.

3. The PAP shall submit reports on respondent's progress every 3 months with immediate (within 48 hours) reports of any positive urine or relapse.

4. Respondent shall pay costs including the costs of investigating and prosecuting this matter in the amount of \$1,540.00 within 30 days of the date of this Order, or in such installments as authorized by the Board staff. All payments shall be by certified check or money order made payable to the State of New Jersey and sent to the Board office at 140 East Front Street, P.O. Box 183, Trenton, New Jersey 08625-0183.

NEW JERSEY BOARD OF MEDICAL
EXAMINERS

By: 
Paul Mendelowitz, M.D.
President

**DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE
WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE
HAS BEEN ACCEPTED**

APPROVED BY THE BOARD ON MAY 10, 2000

All licensees who are the subject of a disciplinary order of the Board are required to provide the information required on the addendum to these directives. The information provided will be maintained separately and will not be part of the public document filed with the Board. Failure to provide the information required may result in further disciplinary action for failing to cooperate with the Board, as required by N.J.A.C. 13:45C-1 et seq. Paragraphs 1 through 4 below shall apply when a license is suspended or revoked or permanently surrendered, with or without prejudice. Paragraph 5 applies to licensees who are the subject of an order which, while permitting continued practice, contains a probation or monitoring requirement.

1. Document Return and Agency Notification

The licensee shall promptly forward to the Board office at Post Office Box 183, 140 East Front Street, 2nd floor, Trenton, New Jersey 08625-0183, the original license, current biennial registration and, if applicable, the original CDS registration. In addition, if the licensee holds a Drug Enforcement Agency (DEA) registration, he or she shall promptly advise the DEA of the licensure action. (With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board. In addition, at the conclusion of the term, the licensee should contact the DEA to advise of the resumption of practice and to ascertain the impact of that change upon his/her DEA registration.)

2. Practice Cessation

The licensee shall cease and desist from engaging in the practice of medicine in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. (Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry.) The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by any health care practice or any other licensee or health care provider. (In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.)

A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take affirmative action to stop advertisements by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from professional listings, telephone directories, professional stationery, or billings. If the licensee's name is utilized in a group practice title, it shall be deleted. Prescription pads bearing the licensee's name shall be destroyed. A destruction report form obtained from the Office of Drug Control (973-504-6558) must be filed. If no other licensee is providing services at the location, all medications must be removed and returned to the manufacturer, if possible, destroyed or safeguarded. (In situations where a license has been suspended for less than one year, prescription pads and medications need not be destroyed but must be secured in a locked place for safekeeping.)

3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations and Limited Liability Companies

A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee who is a shareholder in a professional service corporation organized to engage in the professional practice, whose license is revoked, surrendered or suspended for a term of one (1) year or more shall be deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of all financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall divest him/herself of all financial interest. Such divestiture shall occur within 90 days following the the entry of the Order rendering the licensee disqualified to participate in the applicable form of ownership. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the Secretary of State, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification.

4. Medical Records

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of

general circulation in the geographic vicinity in which the practice was conducted. At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to medical records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her medical record or asks that record be forwarded to another health care provider, the licensee shall promptly provide the record without charge to the patient.

5. Probation/Monitoring Conditions

With respect to any licensee who is the subject of any Order imposing a probation or monitoring requirement or a stay of an active suspension, in whole or in part, which is conditioned upon compliance with a probation or monitoring requirement, the licensee shall fully cooperate with the Board and its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a) Monitoring of practice conditions may include, but is not limited to, inspection of the professional premises and equipment, and inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with the Board Order and accepted standards of practice.

(b) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by a rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and providing the designated sample.

NJ License #

ADDENDUM

Any licensee who is the subject of an order of the Board suspending, revoking or otherwise conditioning the license, shall provide the following information at the time that the order is signed, if it is entered by consent, or immediately after service of a fully executed order entered after a hearing. The information required here is necessary for the Board to fulfill its reporting obligations:

Social Security Number¹: _____

List the Name and Address of any and all Health Care Facilities with which you are affiliated:

List the Names and Address of any and all Health Maintenance Organizations with which you are affiliated:

Provide the names and addresses of every person with whom you are associated in your professional practice: (You may attach a blank sheet of stationery bearing this information).

¹ Pursuant to 45 CFR Subtitle A Section 61.7 and 45 CFR Subtitle A Section 60.8, the Board is required to obtain your Social Security Number and/or federal taxpayer identification number in order to discharge its responsibility to report adverse actions to the National Practitioner Data Bank and the HIP Data Bank.

**NOTICE OF REPORTING PRACTICES OF BOARD
REGARDING DISCIPLINARY ACTIONS**

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record, including the transcript and documents marked in evidence, are available for public inspection, upon request.

Pursuant to 45 CFR Subtitle A 60.8, the Board is obligated to report to the National Practitioners Data Bank any action relating to a physician which is based on reasons relating to professional competence or professional conduct:

- (1) Which revokes or suspends (or otherwise restricts) a license,
- (2) Which censures, reprimands or places on probation,
- (3) Under which a license is surrendered.

Pursuant to 45 CFR Section 61.7, the Board is obligated to report to the Healthcare Integrity and Protection (HIP) Data Bank, any formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation or any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or any other negative action or finding by such Federal or State agency that is publicly available information.

Pursuant to N.J.S.A. 45:9-19.13, if the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, it is obligated to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every other board licensee in this state with whom he or she is directly associated in private medical practice.

In accordance with an agreement with the Federation of State Medical Boards of the United States, a list of all disciplinary orders are provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order will appear on the public agenda for the next monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which is made available to those members of the public requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.